

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1907.

No. 1807. **503**

No. 6, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

ALBERT M. KEEN.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 11, 1907.

Court of Appeals of the District of Columbia.

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In the Court of Appeals of the District of Columbia.

No. 1807.

THE DISTRICT OF COLUMBIA, Plaintiff in Error,
vs.
ALBERT M. KEEN.

a No. 306,679.

In the Police Court of the District of Columbia, June Term, 1907.

DISTRICT OF COLUMBIA
vs.
ALBERT M. KEEN.

Information for Violation of Police Regulations.

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Information.*

In the Police Court of the District of Columbia, June Term, A. D.
1907.

THE DISTRICT OF COLUMBIA, ss:

Edward H. Thomas, Esq., Corporation Counsel, by James L. Pugh, Jr., Esq., Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Albert M. Keen, late of the District of Columbia aforesaid, did keep poultry in square 2610 within the District of Columbia, said square having seventy-five per cent of its territory improved, without first having obtained a permit from the Health Officer; contrary to and in violation of the Police Regulations of the District of Columbia, and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel.
By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared C. H. Welch this 18th day of June, A. D. 1907, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

L. F. ENGBESBY,
Deputy Clerk, Police Court of the
District of Columbia.

Bill of Exceptions.

In the Police Court of the District of Columbia.

No. 306,679.

DISTRICT OF COLUMBIA

vs.

ALBERT M. KEEN.

Be it remembered that at the trial of this case, which came on for hearing on the 24th day of June, A. D. 1907, before the Honorable Alexander R. Mulloony, presiding Judge, the defendant interposed a motion to quash the information filed in said case upon the following grounds, to wit:

1. That said information charges no offense against the defendant.

2. That Section 6 Article VII of the Police Regulations of the District of Columbia, on which said information is based, is unconstitutional, unreasonable, unusual, unjust, and oppressive, and deprives the defendant of the use and enjoyment of his property.

3. That said Section 6 of said Article VII of the Police Regulations on which said information is based is vague and uncertain and inconsistent with Section 4 of Article VII of said Police Regulations.

4. That said Section 6 of said Article VII of said Police Regulation, is unconstitutional and void in that it unjustly discriminates against the defendant and in favor of any person living in any square or block within the District of Columbia which is not improved to the extent of seventy-five per cent (75 %).

5. That said Section 6 is not such a reasonable regulation as the Commissioners of the District of Columbia are authorized to make by act of Congress of Jan. 26, 1887, and by joint resolution of Congress of Feb. 26, 1892.

6. That said Section 6 is unreasonable and void in that it discriminates in favor of owners of fowls and pigeons confined in coops in regularly established provision houses or public markets and in favor of owners of homing pigeons.

7. That said Section 6 is unreasonable and void in that the District Commissioners have no right or power by ordinance to

delegate to the residents of the same square in which the accused resides the right to say whether live fowls or pigeons shall be kept by him.

After hearing argument of Counsel on said motion the Court ruled as matter of law that the Police Regulations under which said information was filed is unconstitutional on the ground that it lacked the requisite uniformity in that it discriminates in favor of owners of fowls and pigeons confined in coops in regularly established provision houses or public markets and in favor of owners of homing pigeons, and sustained the motion to quash said information on said ground and ordered the discharge of the defendant.

Whereupon Counsel for the District of Columbia excepted to said ruling of the Court, which exception was duly noted by the Court upon his minutes, and thereupon the District of Columbia, by its counsel, gave notice in open Court at the time of said ruling of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

The District of Columbia, by its counsel, therefore prays the Court to settle, sign and seal this its bill of exceptions, which is accordingly done now for then this 26th day of June, A. D. 1907.

(Signed) ALEXANDER R. MULLOWNY,
*Judge of the Police Court of the
District of Columbia.*

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(Copy of Docket Entries.)

No. 306,679.

In the Police Court of the District of Columbia, June Term, A. D. 1907.

DISTRICT OF COLUMBIA

v's.

ALBERT M. KEEN.

Information for Violation of Police Regulations.

June 20, 1907:—Motion to quash information filed and argued.

June 24, 1907:—Motion to quash information sustained. Defendant ordered discharged.

Exceptions taken to rulings of the Court on matters of law and notice given by the District of Columbia, through its Assistant Corporation Counsel, in open Court at the time of said rulings, of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

June 26:—Bill of exceptions filed, settled and signed.

July 5, 1907:—Writ of error received from the Court of Appeals of the District of Columbia.

In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Joseph Y. Potts, Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 4 inclusive, to be true copies of originals in cause No. 306,679 wherein the District of Columbia is plaintiff and Albert M. Keen defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, the City of Washington, in said District, this tenth day July, A. D. 1907.

[Seal Police Court of the District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Honorable Alexander R. Mulloony Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between the District of Columbia, plaintiff, and Albert M. Keen, defendant, a manifest error hath happened, to the great damage of the said plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 5th day of July, in the year of our Lord one thousand nine hundred and seven.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.
By MONCURE BURKE,
Assistant Clerk.

Allowed by
SETH SHEPARD,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia police court. No 1807. The District of Columbia, plaintiff in error, *vs.* Albert M. Keen. Court of Appeals, District of Columbia. Filed July 11, 1907. Henry W. Hodges, clerk.